

OCUFA Briefing Note

Issue: Elimination of Mandatory Retirement

Date: April 2007

For more information on the elimination of mandatory retirement, and copies of relevant OCUFA papers and submissions, please see the Mandatory Retirement section of the website.

Legislation eliminating mandatory retirement in Ontario came into effect on December 12, 2006, one year after Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement, received Royal Assent. The Ontario government introduced the legislation on June 7, 2005; OCUFA and member associations made presentations to the Standing Committee on Justice Policy when the bill was being considered. OCUFA expressed our appreciation for the intentions of Bill 211 and expressed concern in two areas. On December 8, 2005, Bill 211 passed third reading, and on December 12, 2005 Bill 211 received Royal Assent.

- The legislation essentially changed the definition of age in the Human Rights Code to protect workers over 65 from discrimination in employment. This legislative initiative has been a long time coming. Over the past two decades, OCUFA and member associations have lobbied the provincial government to end age discrimination in employment. In the late 1980s, OCUFA was a participant in the Supreme Court of Canada case on this issue, and the organization has maintained its commitment to the elimination of mandatory retirement.
- In the fall of 2004, OCUFA participated in the Ministry of Labour consultation process on ending mandatory retirement. During that same year, OCUFA held numerous meetings with staff from the Premier's office, the Ministry of Labour and the Ministry of Training, Colleges and Universities. OCUFA also held a caucus lunch for Liberal MPPs in university ridings, as well as meetings with opposition parties and leaders. In an effort to raise the profile of the issue, OCUFA held a media conference and submitted letters, articles and op-ed pieces to leading newspapers for the edification of the general public.
- While the passing of this long awaited bill represents a significant victory for OCUFA in its fight for the elimination of mandatory retirement, OCUFA contends that Bill 211 took too long to come into effect (two cohorts of faculty were forced to retire at 65 during the legislative and phase-in periods) and still contains a significant flaw in that it fails to protect workplace benefits for workers once they turn 65.
- With regard to the issue of benefits, the legislation maintains the clause in the Employment Standards Act which ends protection against discrimination on the basis of age in the provision of benefits at age 65. This means an employer may change or cancel any workplace benefits when a worker turns 65. OCUFA commissioned research from the law firm of Sack Goldblatt Mitchell on how other jurisdictions handled the employment benefits issue after mandatory retirement was abolished. Their opinion was that no other jurisdiction had given employers carte blanche to cancel benefits at age 65.

- Realizing that the bill, as originally drafted, could result in a successful complaint to the Human Rights Commission, the Ontario government amended the Human Rights Code during the committee stage, making it impossible for persons to file complaints to the Human Rights Commission on the grounds that differential benefits are discriminatory. The only alternative for persons to voice their grievances is through a Charter challenge; it is deemed possible that the subsections dealing with benefit plans and the Workplace Safety and Insurance Act will not withstand a challenge that the law discriminates on the basis of age contrary to Section 15 of the Canadian Charter of Rights and Freedoms.
- OCUFA is committed to assisting member associations in negotiations with employers regarding the protection of insured workplace benefits such as dental and insurance coverage, for employees 65 years and older. We are also committed to working with member associations toward ensuring the continuation of other benefits faculty currently receive, such as professional expenses and sabbaticals. We will continue to provide updates on the end of mandatory retirement as more information becomes available.